IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.1081 of 2000

Meyyammai
Proprietrix of
M/s Murugan Enterprises
10/2-B,Mariappa Konar Street
Kattoor, Coimbatore 641 009 .. Appellant/Complainant

vs.

1. M/s India Engineering Corporation
C-25,Private Industrial Estate
Kuruchi
Coimbatore 641 021

2. V.D.Indiran
3. G.Renuka Respondents/Accused

Prayer: This appeal has been filed under Section 378 of Crl.P.C. preferred against the Judgment dated 21.08.2000, in C.C.No.324 of 1997 on the file of Judicial Magistrate No.1, Coimbatore.

For Appellant : Mr.P.Jagadeesan

For Respondents : Mr.C.D.Johnson

JUDGMENT

This appeal has been preferred against the judgment in C.C.No.324 of 1997 on the file of the Judicial Magistrate No.1, Coimbatore. On a private complaint under Section 200 of Cr.P.C., the accused was charged under Section 138 of the Negotiable Instruments Act, 1881.(herinafter referred to "the Act").

2. The complainant was examined before the trial Court and the learned Judicial Magistrate , after taking cognizance of the offence and after the accused appearing on summons, copies under Section 207 of Cr.P.C. Were furnished and when the offence was explained to the accused, they pleaded not guilty.

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3. On the side of the complainant, P.Ws 1 and 2 were examined and Exs P1 to P8 were marked.

4. P.W.1,the complainant, in her evidence would depose that there was a transactions between the complainant and the accused in respect of G.I.Pipes and on the date of drawal of the cheque Ex P1 by the accused, the amount due to the complainant under the above said transactions was Rs.6,00,244/50ps and when the cheque was presented in the Bank of Madura, Ramnagar Branch, the same was returned with an endorsement "there was no sufficient funds in the account of the drawer of the cheque". Exs P2 and P3 are the memos issued by the Bank of Madura, Ramnagar branch along with the dishonoured cheque Ex P1. The complainant had issued a notice to the accused under the original of Ex P4 on 26.4.1995. So the accused have received the said notice under Ex P5 to P7 acknowledgments. The second accused has signed in Ex P1 cheque on behalf of A1 company. According to P.W.1 both A2 and A3 were managing the affairs of A1 Company.

4a. P.W.2 is the Deputy Manager of Catholic Syrian Bank, wherein A1 Company is having an account . According to P.W2,Ex P1 cheque was forwarded to their bank for collection on 10.4.1995 through the Bank of Madura and that the said Ex P1 cheque was returned with an endorsement that there is no sufficient funds in the account of the drawer of the Cheque. Ex P8 is the statement of account relating to the account of A1 Company.

5. When the incriminating circumstances were put to the accused, they deny their complicity with the crime. D.W.1 the Accountant of A1 Company was examined on behalf of the accused and Exs D1 to D22 were marked.

6. After scanning the evidence both oral and documentary, the learned Judicial Magistrate, Coimbatore has come to a conclusion that the complainant has failed to prove the guilt against the accused under Section 138 of the Act and accordingly acquitted the accused under Section 255(1) of Cr.P.C. Aggrieved by the findings of the learned trial Judge, the complainant has preferred this appeal.

7. Now the point for determination in this appeal is whether the findings of the learned trial Judge is perverse in nature to warrant anay interference from this Court?.

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8. Heard Mr.P.Jagadeesan, learned counsel for the appellant and Mr.C.D.Johnson, learned counsel for the respondents and considered their rival submissions.

9.The Point:
Under Section 138 of the Act, it is the bounden duty of the complainant to prove that there was a legally enforceable debt or other liability, to warrant conviction against the accused. The learned counsel appearing for

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the appellant relying on a decision reported in K.N.Beena-v- Muniyappan and another(2001 (4) Crimes 376(SC) and contended that the burden is on the accused to prove that the impugned cheque was drawn for another existing debt or other liability and onus is not on the complainant.

10. In the said dictum, the trial Magistrate has convicted and sentenced the accused under Section 138 of the Act but in the revision, the High Court has set aside the conviction which necessitated the complainant to approach the Honourable Apex Court wherein it has been held as follows:

> "In our view the impugned Judgment cannot be sustained at all. The Judgment erroneously proceeds on the basis that the burden of proving consideration for a dishonoured cheque is on the complainant. It appears that the learned Judge has lost sight of Sections 118 and 139 of the Negotiable Instruments Act. Under Section 118, unless the contrary was proved, it is to be presumed that the Negotiable Instruments (including a cheque) had been made or drawn for consideration. Under Section 139 , the Court has to presume, unless the contrary was proved that the holder of the cheque received the cheque for discharge, in whole or in part of a debt or liability. Thus in complaints under Section 138, the Court has to presume that the cheque had been issued for a debt or liability. This presumption is rebutable. However, the burden of proving that a cheque had not been issued for a debt or liability is on the accused. This Court in the case of Hiten P.Dalar v. Bratindranath Banerjee reported in (2001) 6SCC 16 has also taken an identical view. In this case admittedly the 1st respondent has led no evidence except some formal evidence. The High Court appears to have proceeded on the basis that the denials/averments in his reply dated 21st May, 1993, were sufficient to shift the burden of proof on to the appellant/Complainant to prove that the cheque was issued for a debt or liability. This is an entirely erroneous approach. The 1st respondent had to prove in the trial, by leading cogent evidence, that there was no debt or liability. The 1st respondent not having led any evidence could not be said to have discharged the burden cast on him. The 1st respondent not having discharged the burden of proving that the cheque was not issued for a debt or liability, the conviction as awarded by the Magistrate was correct. The High Court erroneously set aside the conviction . In this view of the matter the impugned judgment is set aside".

But that is not the case herein. On the basis of both oral and documentary evidence let in before the Court, the learned Judge has come

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to a conclusion that the complainant has failed to prove the charge levelled against the accused under Section 138 of the Act.

11. According to the complainant, who was examined as P.W1 as per the transactions regarding the sale of G.I.Pipes during the year 1994, the amount due to the complainant was Rs.6,00,244/50ps and only to discharge the said debt, the accused had drawn ExP1 impugned cheque of Rs.6,00,244/50ps. But to show that on the date of drawal of ExP1 impugned cheque, the amount due to the complainant was Rs.6,00,244/50ps. No account maintained by the complainant was produced in this regard.

12. The learned counsel appearing for the complainant relying on Ex P9 letter dated 14.3.1992 addressed on behalf of A1 Company to M/s Murugan Enterprises, the company owned by the complainant and contended that even in the year 1992, the accused have admitted that a sum of Rs.6,00,244/50ps was due to the complainant by the accused in the transaction. But admittedly, the impugned cheque Ex P1 is dated 10.4.1995. Relying on a letter written by the accused in the year 1992 the complainant cannot say that even in the year 1995, the same amount ie., Rs.6,40,368/10ps was issued to the complainant from the accused. If it is so, then, the complainant would not have accepted the cheque for lessor amount in the year 1995. If the interest is added to the amount due under Ex P9, then will be much more higher than the amount mentioned in the impugned cheque dated 10.4.1985. It is the case of the accused by way of defence that amount due to the complainant in the year 1995 was only Rs.5,07,230/70ps as observed in by the Honourable Apex Court in K.N.Beena-v- Muniyappan and another(2001 (4) Crimes 376(SC) cited above, the burden of proof now shifts on the shoulders of the accused to claim that during 1995 the amount due to the complainant from the accused was only Rs.5,07,230/70ps and not Rs.6,00,244/50ps. To substantiate their contention, the accused have examined their Accountant as D.W.1 and through him have produced Exs D1 to D22 accounts maintained by A1's Company. Ex D9 is the day book maintained in the year 1994-95 for A1's Company contains the relevant entries for the transactions at Page Nos.4, 14, 28,34, 38,39,41, 44, 46, 48, 59, 74, 94, 98, 103, 104, 11, 115, 119, 128,129,134,139,141 and 143. As per Ex D14(series) bills for the purchase of G.I.Pipes from the complainant company by A1 Company shows that the amount due for the month of January 1995 to the complainant company by A1 Company was Rs.5,07,230/70ps only.

13. To warrant conviction under Section 138 of the Act, the burden is on the complainant to prove that the impugned cheque drawn by the accused related to discharge the legally enforceable debt or other liability. The accused in this case has proved that on the date of issue of Ex P1 impugned Cheque, the amount due was only Rs.5,07,230/70ps and that impugned cheque is not for the transactions mentioned in the complaint. Under such circumstances, the said ratio decidenti(K.N.Beena-v- Muniyappan and another(2001 (4) Crimes 376(SC) will not be applicable to the present facts of the case.

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14. Under such circumstances, I do not find any reason to interfere with the findings of the learned trial Judge who after relying on the evidence of D.W.1 and documents Exs D1 to D22 produced on the side of the accused, has come to a conclusion that there is no reason to warrant conviction against the accused under Section 138 of the Act. The point is answered accordingly.

15. In the result, the appeal is dismissed confirming the Judgment in C.C.No.324 of 1997 on the file of Judicial Magistrate No.1, Coimbatore.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sg

To,

1.The Judicial Magistrate-No1,Coimbatore

2. -do- the Chief Judicial Magistrate, Coimbatore.

+ 1 CC To Mr. P.Jagadeesan, Advocate SR NO.33331

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